



NAVIGATING GOVERNMENT ACTION IN A POST-COVID-19 WORLD



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Introduction

The spread of COVID-19 through Canada and the world has led to widespread social and legal change. One significant change has been, and will increasingly be, the increasing reach of government regulation into everyday life.

As COVID-19 has spread across Canada, governments and public officials have made a variety of emergency orders and declarations, granting them sweeping powers to manage and regulate everyday lives in order to control this new disease.

Government regulation, while common, is not something the average Canadian has had particular experience dealing with, beyond their regular trips to their local Motor Vehicle licensing office. Canadians, rather, typically only see the results of regulation: Canada's fishery and food production are highly regulated to ensure safety and sustainability, and activities such as resource extraction and utilization are subject to intense regulatory oversight in order to mitigate the risk of environmental harm.

We have prepared this article to help individuals, businesses, and other organizations plan for operating within a new and likely unfamiliar regulatory environment. It is intended to provide general guidance only and it is not intended to provide you with legal advice for any specific situation.

Changes

Within the past few weeks, governments have resorted to taking a much more active role in managing social distancing and quarantines by declaring public health emergencies. These declarations empower various officials to make mandatory orders affecting a wide variety of daily activities which, for a very long time, have been left untouched by government.

As of today, the federal government has implemented mandatory quarantines for travellers entering Canada. In B.C., where the author is located, the chief public health officer has made orders respecting social gatherings and operation of grocery stores and we expect these measures to increase before this crisis is over.

Failure to abide by these orders carries significant potential consequences, including steep fines and periods of imprisonment.

What to Do - Compliance

The law does not impose a standard of perfection on participants of a regulatory regime. Rather, you are expected to make all reasonable efforts to comply with the rules and orders in place at the time. A few regular habits can help ensure you remain on side of the law.

(1) Keep track of Government Orders and Action

Knowledge of the rules you must follow is critical. Ignorance of the orders which you are required to follow is no more a defence to a regulatory offence than ignorance of the law is to a traditional criminal offence. Unlike criminal offences, however, regulatory rules which must be followed can change daily. You should thus ensure you keep yourself up to date on all applicable federal, provincial, and municipal orders which may apply to your business or personal circumstances.

In addition to hosting daily press briefings which are well covered by news and on social media, governments have done a good job maintaining websites with detailed COVID-19 information, including mandatory orders which should be followed.

<https://www.canada.ca/en/public-health/services/diseases/coronavirus-disease-covid-19.html>

<https://www2.gov.bc.ca/gov/content/safety/emergency-preparedness-response-recovery/covid-19-provincial-support>

<https://vancouver.ca/home-property-development/covid-19-coronavirus-within-vancouver.aspx>

The BC Government has also developed an app which provides live updates and information.

You should regularly review all of these resources to ensure your understanding of the present legal environment is current.

(2) Develop (and maintain) Standards of Practice

One of the most important ways you can ensure you remain onside of the law is by developing and implementing standards of best practice consistent with ongoing orders and regulations. Review these practices regularly to ensure they are not only consistent with whatever orders are in place at the time, but also to ensure that they are achieving their aims.

(3) Ensure Everyone is on Board

For businesses, it is imperative that you not only provide adequate training to your employees respecting all orders in place and policies designed to ensure compliance therewith.

Also consider having written policies which are accessible and available for all team members, and ensure they are reviewed consistently by all.

To the extent extra resources are needed to ensure your employees can comply with your policies, these resources must be provided.

What to Do – Cooperation

Both Canada's Quarantine Act and BC's Public Health Act require cooperation with inspectors carrying out official duties under the respective statutes. If an inspector or officer arrives at your place of residence or business to ensure that you are complying with certain orders or rules, you must generally cooperate with them and provide them with the information they seek. A failure to cooperate is almost always an offence in a regulatory environment and often leads to prosecution.

There are exceptions to this rule; the purpose of the inspection must be to ensure compliance with the law and not to collect evidence for the purposes of a prosecution of an offence. It is not an easy distinction to make and so, if you have any question as to how handle an inspection, you should seek legal advice right away.

What to Do – Disagreements

As has been noted, a failure to abide by an order or rule will typically be an offence and expose you or your business to prosecution.

This does not mean you are without recourse, however. Public officials are often open to discussion and negotiation, to ensure their decisions are fair in the circumstances. If the decision maker is unwilling to bend, their decisions and orders are subject to judicial oversight through a summary process called “judicial review”. There may also be statutory appeals available. You should seek legal advice quickly, however, as there may be deadlines to seek review.

If the immediate effect of an order is unbearable, a stay of the order should be sought immediately, either from the decision maker or the courts.

In the meantime, however, you should ensure you obey the order in place.

Conclusion

While this article has sought to provide generalized advice and guidance, as is the case with any legal problem, what should be done in a specific case will depend on those facts unique to that situation. To that end, we recommend you contact a lawyer who has experience with regulatory law to discuss your unique circumstances.

The lawyers at MacKenzie Fujisawa LLP have particular experience in assisting individuals with navigating regulatory regimes, from working with government officials, to challenging decisions made by statutory decision makers, to defending individuals charged with public welfare offences.

Our firm continues to serve our clients during this difficult time and we would be pleased to help you come up with a plan to navigate this new and uncertain legal environment which is unique to your specific personal and/or business needs or represent you in litigation.